



**CITY OF DURHAM | NORTH CAROLINA**

**Date: March 5, 2013**

**To: Thomas J. Bonfield, City Manager**  
**Through: Wanda Page, Deputy City Manager**  
**From: Deborah Giles, EO/EA Director**

**Subject: Small Local Business Enterprise Program Ordinance**

### **Executive Summary**

On June 16, 2011, the City of Durham was successful in gaining the passage of Session Law 2011-168 Senate Bill 297, a local act amending the Charter of the City of Durham to authorize the City to establish a Small Business Enterprise Program to promote the development of small businesses in the City and to enhance the opportunities for small businesses to participate in City contracts. Various local preference programs from around the country were reviewed and comments and input were received from internal and external stakeholders. The recommended program was modified based on input received. The City's construction and professional services contracts, specifically contracts that were \$500,000 or less were reviewed. Databases of general contracting, architectural, engineering and surveying individuals/firms licensed and residing in the Durham Metropolitan Statistical Area (MSA) who might potentially bid/propose on contracting opportunities were reviewed. The proposal for Durham's own, unique iteration of a local preference program –The Durham Small Local Business Enterprise Program is recommended. To implement this program, the accompanying Small Local Business Enterprise Program Ordinance, as drafted by the City Attorney's Office, requires approval.

### **Recommendation**

The Department of Equal Opportunity/Equity Assurance recommends that the City Council adopt the Small Local Business Enterprise Program Ordinance establishing the Small Local Business Enterprise Program.

### **Background**

On June 16, 2011, the City of Durham was successful in gaining the passage of Session Law 2011-168 Senate Bill 297, a local act amending the Charter of the City of Durham to authorize the City to establish a Small Business Enterprise Program to promote the development of small businesses in the City and to enhance the opportunities for small businesses to participate in

City contracts. The following is a chronology of the events leading to the presentation of the proposed Small Local Business Enterprise Program:

- February, 2010: N.C. implements an Enhanced Procurement Program by Executive Order of Governor Purdue. (Executive Order 50).
- February, 2010: Durham stakeholders approach the City about implementing a program for small local businesses.
- April, 2010: Request made to add item to City legislative agenda.
- April-November, 2010: Department of EOEA and City Attorney's office work on drafts of two possible program concepts-Enhanced Procurement and Small Business Enterprise Programs.
- December, 2010: City Council approves addition of both program concepts to its legislative agenda.
- January, 2011: Two program proposals presented to legislative delegation and they supported the Small Business Enterprise Program concept only.
- June, 2011: Senate Bill 297 approved by the General Assembly granting the City charter authority to develop a Small Business Enterprise Program to promote the development of small businesses in the Durham Metropolitan Statistical Area.
- June, 2011-September, 2012: EOEA and City Attorney work to refine acceptable SBE program draft.(Review of programs around the country, multiple reviews of contracting data, obtaining lists of firms/individuals licensed in construction & professional services, etc.)
- September, 2012: City Manager gives support to program draft.
- October, 2012: Draft SLBEP presented to City Department Heads for feedback.
- November, 2012: Town Hall meeting held on proposed program for feedback.
- November, 2012 –January, 2013: Review of input, drafting Q&A document, additional data review, program modification as appropriate.
- January 24, 2013-Presented overview of SLBEP to City Council and received input.
- February 28, 2013-Held second Town Hall meeting to receive input from the public and share modifications made since the previous meeting.

The proposed Small Local Business Enterprise Program is a race-gender neutral program for the purpose of supporting local small businesses and enhancing the tax base and employment opportunities. It is applicable only to individuals and firms in Durham, Orange, Person and Chatham Counties (Durham MSA) and would apply to all construction contracts up to \$500,000 and architectural, engineering and surveying services contracts up to \$100,000. Contracts funded from grants from other governmental entities which restrict or prohibit the use of local preferences in contracting are exempted from this program. To be eligible to participate in the program, a firm must:

- Be a non-governmental person or entity.
- Meet the size standards of the U.S. Small Business Administration with regards to number of employees and business income averaged over the last three-year period.
- Have a Principal office within the Durham MSA and at least 25% of the full time employees reside in the Durham MSA or a regional, branch or satellite office that has been established in the Durham MSA for a year or more, and at least 25% of the full time employees reside in the Durham MSA.

Individuals or firms meeting the eligibility criteria must apply for certification with the Department of Equal Opportunity/Equity Assurance (EOEA). When there are construction projects up to \$500,000 or professional services opportunities up to \$100,000, the user department and EOEA

will determine if the projects are appropriate for the Small Local Business Program. If there are insufficient firms, no eligible firms, or a project is highly specialized; a broader pool of firms may be utilized. Only certified local small businesses will receive advertisements to bid/propose on SLBE projects. Bids/proposals will be received, reviewed and awarded to the lowest responsible, responsive bidder or the proposer who best meets the evaluation criteria.

### **Issues and Analysis**

During the course of the program development process, comments regarding the construction aspect of the proposed program were received. There were multiple comments and questions from the professional services providers, with vocal opposition from individuals and firms outside of the Durham MSA. Issues raised included the program's compliance with legal requirements of professional services contracting, availability of qualified firms to perform services, the restrictive boundary of the program and contract size. All issues raised were fully vetted by the City Administration and City Attorney's office. Some modifications were made to the original program proposal base on comments/issues raised. The administration is satisfied that the proposed program and ordinance comports with all requisite laws and the legislative authority granted.

### **Alternatives**

The City may choose to modify the ordinance (ie. make the program only applicable to construction) or choose not to adopt the ordinance.

### **Financial Impact**

There is no fiscal impact since the proposed new program will be implemented with existing staff and resources.

### **SDBE Summary**

This is an ordinance and was not reviewed by the Department of Equal Opportunity/Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.

Attachment